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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/654,118	09/03/2003	Tim A. Fischell	CRD-5047	4013

27777 7590 09/15/2006
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EXAMINER

AUGHENBAUGH, WALTER

ART UNIT	PAPER NUMBER
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1772

DATE MAILED: 09/15/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/654,118

Applicant(s)

FISCHELL ET AL.

Examiner

Walter B. Aughenbaugh

Art Unit

1772

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 September 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on September 6, 2006 has been entered.

Acknowledgement of Applicant's Amendments

2. The amendments made in claims 1 and 10 in the Amendment filed September 6, 2006 (Amdt. B) have been received and considered by Examiner.

WITHDRAWN OBJECTIONS

3. The objection to the specification made of record in paragraph 10 of the previous Office Action mailed May 10, 2006 has been withdrawn due to Applicant's amendments in claims 1 and 10 in Amdt. B.

WITHDRAWN REJECTIONS

4. The 35 U.S.C. 112, first paragraph rejection of claim 1 made of record in paragraph 12 of the previous Office Action mailed May 10, 2006 has been withdrawn due to Applicant's amendment in claim 1 in Amdt. B.

REPEATED REJECTIONS

Claim Rejections - 35 USC § 112

5. The 35 U.S.C. 112 rejection of claims 1 and 4 made of record in paragraph 14 of the previous Office Action mailed May 10, 2006 has been repeated for the reasons previously made

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of record and for the following reason that addresses the amendment made in claim 1 in Amdt.

B: The opening is between which two components: between two perimeters of two different spokes? The location of the opening relative to the other components of the stent cannot be ascertained. The word “enclosing” indicates that the opening is within the perimeter of one of the spokes, but this is contradicted by the word “therebetween”, which requires that the opening is between two components. Something cannot be “[]between” a single perimeter.

Claim Rejections - 35 USC § 102

6. The 35 U.S.C. 102 rejection of claims 1-8 that was repeated in paragraph 5 of the previous Office Action mailed May 10, 2006 has been repeated for the reasons previously made of record and for the following reason that addresses the amendment made in claim 1 in Amdt.

B: the closed perimeter of each of the spokes (where item 12 of Fig. 1 consists of spokes, or where the five connecting elements between item 12 and item 14 as shown in Fig. 1 correspond to spokes) encloses an opening between each of the spokes in either condition identified above (Fig.1).

7. The 35 U.S.C. 102 rejection of claims 10-13 and 15 that was repeated in paragraph 6 of the previous Office Action mailed May 10, 2006 has been repeated for the reasons previously made of record and for the following reason that addresses the amendment made in claim 10 in Amdt. B: the closed perimeter of each of the spokes (each pedal 27 is a spoke) encloses an opening between each of the spokes (Fig. 2).

Claim Rejections - 35 USC § 103

8. The 35 U.S.C. 103 rejection of claims 16 and 17 that was repeated in paragraph 7 of the previous Office Action mailed May 10, 2006 has been repeated for the reasons previously made

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of record and for the reason provided above that addresses the amendment made in claim 10 in Amdt. B.

9. The 35 U.S.C. 103 rejection of claim 9 that was repeated in paragraph 8 of the previous Office Action mailed May 10, 2006 has been repeated for the reasons previously made of record and for the reason provided above that addresses the amendment made in claim 1 in Amdt. B.

10. The 35 U.S.C. 103 rejection of claim 14 that was repeated in paragraph 9 of the previous Office Action mailed May 10, 2006 has been repeated for the reasons previously made of record and for the reason provided above that addresses the amendment made in claim 10 in Amdt. B.

NEW OBJECTIONS

Specification

11. The amendment filed September 6, 2006 is objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. 35 U.S.C. 132(a) states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: the recitation "a closed perimeter enclosing an opening therebetween" in claims 1 and 10 is not supported in the specification as originally filed.

Applicant is required to cancel the new matter in the reply to this Office Action.

NEW REJECTIONS

Claim Rejections - 35 USC § 112

12. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

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13. Claims 1 and 10 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The recitation "a closed perimeter enclosing an opening therebetween" in claims 1 and 10 is not supported in the specification as originally filed.

Response to Arguments

14. Applicant has not proffered any arguments on page 6 of Amdt. B that specifically address the substance of any of the rejections of record.

Conclusion

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Walter B. Aughenbaugh whose telephone number is 571-272-1488. While the examiner sets his work schedule under the Increased Flexitime Policy, he can normally be reached on Monday-Friday from 8:45am to 5:15pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon, can be reached on 571-272-1498. The fax phone number for the organization where this application or proceeding is assigned is to 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR

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system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Walter B. Aughenbaugh

09/08/06

WBA



JENNIFER C. MCNEIL
SUPERVISORY PATENT EXAMINER

9/12/06